



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
Attorney General

Overruled by court judgment
Sam F. Patten v. Concho Co.
District Court, Concho Co.
No. 9581

Honorable O. E. Geron
County Attorney
Ector County
Odessa, Texas

Dear Sir:

Opinion No. 0-3426
Re: Can the Commissioners' Court legally contract with one of the bidders at the April term of court, it being determined at the April term that he was and is the lowest and best bidder, or must the Commissioners' Court again advertise for bids in order to comply with Art. 1659?

Your recent request for an opinion of this department on the above stated question has been received.

We quote from your letter as follows:

"I desire your opinion upon the following question:

"Article 1659 of Vernon's Annotated Texas Statutes provides that 'the Commissioners' Court, through the County Auditor, shall advertise for a period of two (2) weeks for the purpose of receiving competitive bids on supplies of every kind, road and bridge material, or any other material for the use of said County.

"STATEMENT OF FACTS:

"The Commissioners' Court of Ector County, advertised for bids for road machinery in compliance with Article 1659. In accordance with such advertisement bids were called for and submitted by firms, at the regular March term of

Hon. E. O. Carron, Page 2

the Commissioners' Court. The Chairman of the Commissioners' Court placed the matter of accepting one of the bids to a vote of the court. Two of the Commissioners voted to accept the bid and a like number voted to reject the bid. The Chairman of the Commissioners' Court refused to vote and break the dead-lock, or tie vote, and the matter of accepting and rejecting the remaining four (4) bids was never placed before the court. The commissioners' court neither accepted nor rejected any of the other bids, by a vote of the court, but merely failed to act upon them. The Court adjourned its regular meeting of the March term without any final action upon any of the bids submitted.

"QUESTION:

"Can the Commissioners' Court legally contract with one of these bidders at the April Term of said Court, it being determined at the April term of court that he was and is the lowest and best bidder, OR must the Commissioners' Court again advertise for bids in order to comply with Article 1859?"

Article 1859, Vernon's Annotated Civil Statutes reads as follows:

"Supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the commissioners court, has submitted the lowest and best bid. The county auditor shall advertise for a period of two weeks in at least one daily newspaper, published and circulated in the county, for such supplies and material according to specifications, giving in detail what is needed. Such advertisements shall state where the specifications are to be found, and shall give the time and place for receiving such bids. All such competitive bids shall be

Hon. E. O. Geron, Page 3

kept on file by the county auditor as a part of the records of his office, and shall be subject to inspection by any one desiring to see them. Copies of all bids received shall be furnished by the county auditor to the county judge and to the commissioners court; and when the bids received are not satisfactory to the said judge or county commissioners, the auditor shall reject said bids and re-advertise for new bids. In cases of emergency, purchases not in excess of one hundred and fifty dollars may be made upon requisition to be approved by the commissioners court, without advertising for competitive bids."

From the facts stated in your letter, it is apparent that the Commissioners' Court of Ector County, advertised for bids for road machinery in compliance with Article 1659. In accordance with such advertisement bids were called for and submitted by firms, at the regular March term of the Commissioners' Court. It further appears that there were five bids submitted and the Commissioners' Court neither accepted nor rejected any of the bids, by vote of the court, and failed to act upon such bids except the one bid where two of the commissioners voted to accept the bid and a like number voted to reject the bid. It is further shown in your letter that "the court adjourned its regular meeting of the March term without any final action upon the bids submitted". However, in the last paragraph of your letter it is stated "it being determined at the April term of court that he was and is the lowest and best bidder". Considering all the facts together as presented in your letter, it is clear that the Commissioners' Court did not accept any of the bids submitted. Therefore, it is apparent that none of the bids submitted were satisfactory to the court. It will be noticed that Article 1659, supra, specially provides "when the bids received are not satisfactory to such judge or county commissioners, the county auditor shall reject such bids and re-advertise for new bids". After a careful search of the authorities we have been unable to find any case that decides the question presented in your letter. However, as the Commissioners' Court failed to approve and accept any of the bids submitted at the time and place for receiving such bids as advertised; it is our opinion that the

B. E. O. Geron, Page 4

Commissioners' Court cannot now legally contract with any
the bidders submitting such bids at the March term of
court, but it is the duty of the county auditor to reject
old bids and re-advertise for new bids.

Trusting that the foregoing fully answers your
inquiry, we are

Yours very truly

APPROVED APR 25, 1941

ATTORNEY GENERAL OF TEXAS

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